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SUPREME COURT OF THE UNITED STATES

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No. 302

PETER BALINOVIC,

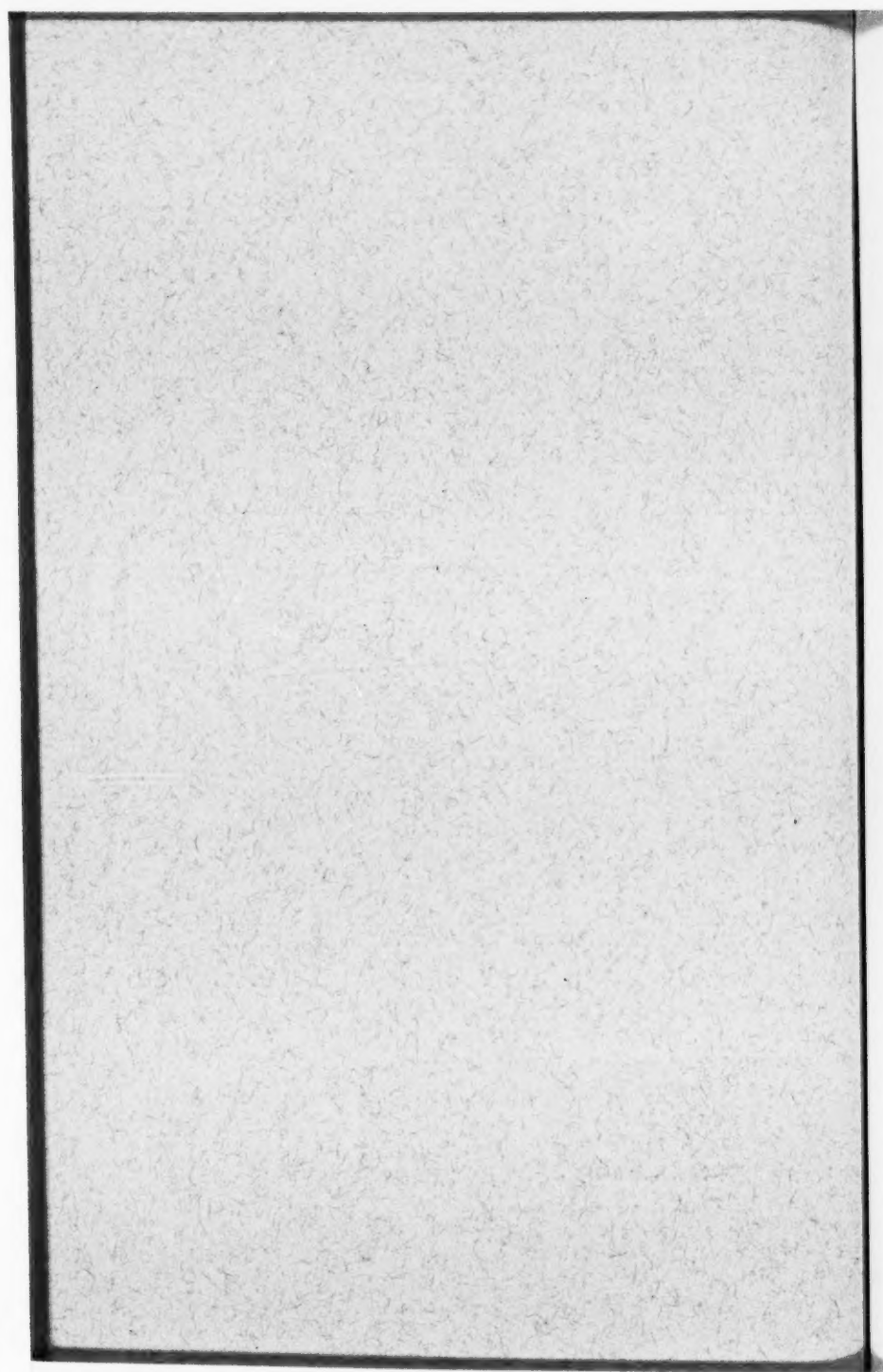
Petitioner,

vs.

THE EVENING STAR NEWSPAPER CO.,
A CORPORATION.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA AND BRIEF IN SUPPORT
THEREOF.**

ALVIN L. NEWMYER,
DAVID G. BRESS,
LEWIS H. SHAPIRO,
Counsel for Petitioner.



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A CORPORATION.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA.**

*To the Chief Justice of the United States and Associate
Justices of the Supreme Court of the United States:*

Your petitioner, Peter Balinovic, respectfully shows to
this honorable court, as follows:

Petitioner sued the respondent in the District Court of
the United States for the District of Columbia to recover
damages for personal injuries sustained when petitioner
was struck by respondent's delivery truck as a result of
the alleged negligence of respondent's truck driver. At the
time of petitioner's injuries he was returning from his place

of employment, as an employee of the Public Parks Division of the District of Columbia with other employees, when that truck was struck by respondent's truck operated by its regular truck driver (R. 10, 14). Apart from the disputed questions of fact relative to the issue of negligence, the only defense relied upon by respondent was based upon its contention that since the driver of its truck was, at the time of the petitioner's injury, engaged in the pursuit of an alleged criminal at the direction of a police officer of the District of Columbia the doctrine of respondeat superior did not apply and its driver was not then acting within the scope of his employment but had entered into the employment of a special master, the municipal government of the District of Columbia. Sustaining this contention, the Trial Court granted respondent's motion for a directed verdict at the conclusion of all the evidence (R. 6). On appeal to the United States Court of Appeals for the District of Columbia, judgment was affirmed on May 6, 1940 by a 2 to 1 decision, the majority opinion being written by Mr. Justice Edgerton, to which Mr. Justice Rutledge wrote a lengthy dissenting opinion (R. 20).

Question Involved.

The question presented herein is whether or not immunity from liability for negligence of its agent attaches to a corporate employer when such agent and the instrumentalities placed in his custody by his employer are commandeered by a municipal police or other public peace officer to aid in the apprehension of a criminal.

The question is important not only in the District of Columbia but throughout the United States. It has not heretofore been decided by this Court nor by any other Federal court. The effect of the decision of the United States Court of Appeals for the District of Columbia as a

precedent likely to be followed by other courts will create rules of conduct contrary to well considered State authorities and will tend to foster a policy in an age of growing use of dangerous instrumentalities contrary to sound public policy. Insofar as the question involved is applicable locally to the District of Columbia, the powers of public officers in the District of Columbia have been declared by Congress by Title 20, Section 487 of the Code of Laws for the District of Columbia (1929) which is declaratory of the common law and directly affects the question involved in the case at bar.

Statute Involved.

Title 20, Section 487 of the Code of Laws for the District of Columbia (1929), (R. S., D. C. sections 394 and 1035; June 11, 1878, 20 Stat. 107, c. 180, sec. 6) provides as follows:

“The members of the board of commissioners, and of the police force, shall possess in every part of the District all the common-law powers of constables, except for the service of civil process and for the collection of strictly private debts, in which designation fines imposed for the breach of the ordinances in force in the District, shall not be included (R. S., D. C., secs. 394 and 1035; June 11, 1878, 20 Stat. 107, c. 180, sec. 6).”

Reasons Relied On for Allowance of the Writ.

Petitioner relies upon the following grounds why a writ of certiorari should be granted to review the decision of the United States Court of Appeals for the District of Columbia:

1. The United States Court of Appeals for the District of Columbia has decided erroneously a question of general importance.

2. The problem involved in the case is not one of purely local importance but is one of national importance involving the general liability of the public when acting under the direction of public police or peace officers.

3. Said decision of the United States Court of Appeals for the District of Columbia is in conflict with principal decisions on the point in other jurisdictions.

4. The question presents the construction of a statute of Congress relating to the power of police officers.

5. The United States Court of Appeals for the District of Columbia in its majority opinion improperly applied a decision of the Supreme Court of the United States as authoritative on the question involved in the case at bar, the effect of which is strongly refuted in the dissenting opinion.

Prayer.

WHEREFORE your petitioner prays the allowance of a writ of certiorari to the United States Court of Appeals for the District of Columbia in this case, there entitled "*Peter Balinovic, appellant vs. The Evening Star Newspaper Company, a corporation, appellee, No. 7394*", that said cause may be reviewed and determined by this Court, and that the judgment of the United States Court of Appeals for the District of Columbia may then be reversed.

PETER BALINOVIC,
Petitioner,

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